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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/009,229	11/06/2001	Chisato Hirata	ACE-1001	5572

7590 05/13/2005

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EXAMINER

MAI, TRI M

ART UNIT PAPER NUMBER

3727

DATE MAILED: 05/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/009,229

Applicant(s)

HIRATA, CHISATO

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 13-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

1. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hager et al. (D419867) in view of Ota et al. (5238129) or Carew et al. (6044996). Hager teaches a container with a ornamental shape of a figurine shape of a animal. Hager meets all claimed limitations except for the cap, and the base portion is provided with decompression panels. Either of Ota Carew teaches that it is known in the art to provide a decompression panels. It would have been obvious to one of ordinary skill in the art to provide decompression panels in Hager as taught by either Ota or Carew to enable one to manufacture the bottle easily.

With respect to the elliptical cross section and the gradual curved portion, ^{TM.} it is noted there is a gradual curved portion about the neck. Furthermore, it would have been obvious to one of ordinary skill in the art to provide a figurine with an elliptical cross section to provide the desired figurine for the container. Furthermore, It is noted that matter relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

With respect to the cap, the container in Hager would inherently having a cap as claimed. To the degree it is argued that there is no cap in Hager, it would have been obvious to one of ordinary skill in the art to provide a cap to close the bottle.

2. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Becker (D187435) in view of Ota et al. or Carew et al.. Becker teaches a container with a ornamental shape of a figurine shape of a animal. Becker meets all claimed limitations except for the cap, and the base portion is provided with decompression panels. Either of Ota or Carew teaches that it is known in the art to provide a decompression panels. It would have been obvious to one of

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ordinary skill in the art to provide decompression panels in Hager as taught by either Ota or Carew to enable one to manufacture the bottle easily.

With respect to the cap, the container in Becker would inherently having a cap as claimed. To the degree it is argued that there is no cap in Becker, it would have been obvious to one of ordinary skill in the art to provide a cap to close the bottle.

With respect to the elliptical cross section and the gradual curved portion, ^{DM} it is noted there is a gradual curved portion about the neck. Furthermore, it would have been obvious to one of ordinary skill in the art to provide a figurine with an elliptical cross section to provide the desired figurine for the container. Furthermore, It is noted that matter relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

3. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Ota et al. (5238129) or Carew et al. (6044996) in view of either Becker or Hager. It would have been obvious to one of ordinary skill in the art to provide the figurine on top of body portion in either Ota or Carew as taught by either Becker or Hager to attract consumer.

With respect to the cap, the container in either Ota or Carew would inherently having a cap as claimed. To the degree it is argued that there is no cap in Ota or Carew, it would have been obvious to one of ordinary skill in the art to provide a cap to close the bottle.

With respect to the elliptical cross section and the gradual curved portion, ^{DM} it is noted there is a gradual curved portion about the neck in either Becker or Hager. Furthermore, it would have been obvious to one of ordinary skill in the art to provide a figurine with an elliptical cross section to provide the desired figurine for the container. Furthermore, It is noted that

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matter relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

4. Applicant's arguments have been fully considered but they are not persuasive. Applicant asserts that the elliptical cross section having a portion being thicker than a remaining portion of the cross section. It is submitted that the claims do not recite this feature. Furthermore, applicant fails to point out how the elliptical cross section would impart any functionality over the circular cross sections in the combinations of Hager or Becker as set forth above. Furthermore, it is noted that the limitations with respect to ornament having the elliptical cross section and the gradual curved portion related to ornamentation and matter relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art. In re Seid, 161 F.2d 229, 73 USPQ 431 (CCPA 1947).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W Young can be reached on (571)272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tri M. Mai
Primary Examiner
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